O. High Ways

1946.

File No. 46

Legal Department

A **BRANCH**

Subject:—

Question for ~~pass~~ permission for laying Tramways lines across the Bombay Agra Road

(P A/E)

O. High ways /46

File No.

Gen. 194 o.

379-A

C O N T E N T S .

Legal Department File No. 1 O. High Ways / 46.

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Submitted .

2. Please see P.W.D. office notes at pp. 9-11 ante. This relates to the request from the Premier Automobile Coy. Ltd. for permission to lay their tramway lines across the Bombay Agra Road at about mile 12 in blue print p. 2 ante. The tramway is required for hauling up the earth from the Company's quarries on the hills on the north of the road to their low. Lying site for their factory on the other side of the the road which is to be filled up. The Executive Engineer, South Thana Division, does not recommend the proposal in view of the obstruction and delay that would be caused to heavy traffic using the national high way. The Supdt. Engineer is also not much in favour of proposal but suggest that such contruction might be permitted provided it is used only between the hours of 9 P.M. and 6 A.M. The Dy. Secy. P.W.D. states the Adv. General's No. 20 , dated the 28th July 1943 is against allowing such a crossing for private use even though temporarily. The question raised for the consideration of the R.L.A. is whether the permission sought for by the Premier Automobile Coy. can be granted straightaway, if not, whether there is any solution by which the trolly line could be permitted across the road.

3. " The common law rule is " once a highway always a highway". The public cannot release riths once acquired by them, no authority can bind them in purporting to release such right, and there is no extinctive presumption or prescription arising from non-exercise thereof " (cf. Halsbury's Laws of England, Vol. XVI p. 262)"."A statute may authorise the stopping up or diversion of a highway, either expressly or by necessary implication, for instance, if it authorises works inconsistent with the continued existance of the public right of way" (I bid p.264). "It is a nuisance common law either to neglect any legal duty in respect of a highway, or to hinder or pre ent the public frompassing freely safely and convinently along it, unless such prevention or

hindrance is justifiable as an exercise of rights reserved by the dedicating owner, or as an ordinary and reasonable exercise of the rights of a passenger or frontager thereon, or under statutory powers (I bid p. 354). To lay, without statutory powers, along or across a highway a permanent tramway or even temporary rails by the side of an authorised tramway under-going repairs is a nuisance at common law (cf. A.G. V. Barkar (1900) 83 L.T. 1245). In the present case the Premier Automobile Coy. Ltd. ask for permission to lay their tramway across the Bombay Agra Road at about 12 miles in the blue print at p. 2 ante. The laying of the trolley line and the use thereof for the purpose of the Company would constitute a public nuisance because it would be an obstruction and an encroachment on the national highway. The fact that notwithstanding the laying of the trolley line it would be possible for passengers to use the road is irrelevant because it will not prevent the encroachment from being a public nuisance- In the absence of statutary powers for granting permission before the laying of the trolley lines Government as well as the Coy. would be liable to the public for obstructing the road. The Adv. General in his opinion No. 20 . dated the 28th July 1943 has already expressed the view that there is no Act in India which provides for the stoping up or diversion of a highway and in the absence of such power it would not be possible to lay a trolley line across the public road. It will, however, be open to the company, if they are authorised, to construct a tram- way along the public road under the Tramways Act, 1856 , and to continue the line further up on their own land and to allow the company to use the line also as a trolley line for the transport of their goods. (cf. last para. of A. G.'s opinion No. 20 dated 28-7-1943).

Reply may be The attention of P.W.D. is invited to the A.G.'s opinion No. 20 dated 28-7-1943 where the question is fully considered.

Id/- R.T.K.
dt/- 23/5/
Id/- P.N.M.
dt/- 27/5/46.
REmembrancer of Legal Affairs.

U.R. to P. W..D. No. 3983 dated the 28th May 1946.

V.V.K. 5/7/56/
5C.

Office of the R.L.A.

The Premiere Automobile Company Ltd. have requested permissione to lay their tramway lines across the Bombay Agra Road at about mile 12, the exact position of the crossing to be determined in consultation with the local P.W.D. authorities. The questions raised for the considerarion of the R.L.A. are

(1) Whether the permissione sought for by the Premire Automobile Co. Ltd. can be granted if not,

(2) Whether there is any solution by which the trolley line could be permitted across the road.

Question 1. -In Ardesar Jivanji v. Aimai Kuvarji (53 Bom. 187 at p. 196) Marten, C.J. observed :

> " And here I may cite one of the most familiar of English legal principles namely, "Once a highway, always a highways "In England no rights are more keenly upheld and contested in country districts than the rights of the public over public highways of various descriptions. Indeed societies exist for the sole object of preserving the numerous highways whether for carriages or for foot passengers which are part of the advantages of life in England .The only manner in which a public highway can there be stopped up or diverted is under special statutory powers for the purpose. "

In the same ruling Murphy, J.observed as follows :-

> " It is true that section 37 of the Bombay Land Revenue Code vests the ownership of the soil of all roads in Government , but the section itself contains a saving as regards the rights of individuals and rights of way, and does not contain any power to close any road, or to substitute one road for another. It is also true that, in certain cases, by the authority of some statutes, such as the District, Municipal Act, powers have been taken to close roads when necessary and so to obstruct rights of way. But there is no similar provision in the Bombay Land Revenue Code, or in any enactment, such as the District Local Boards Act which could relate to a village, such as this one, where there is no Municipality or Notified Area Committee in existance, and defendant's learned pleader was unable to quote any authority to justify the learned Judge's decree on this point. On the contrary, it is clear that the road in question was a public one,

reserved to
and that Government not having ~~xxxxxxxxx~~ themselves any power to close public roads which have been in existence from time immemorial, it could not close this one, or allow it to be closed, in the manner this has been done.

In his opinion No. 20, dated the 28-7-1943, the Advocate General observed:

> "The laying of the trolley line (on the public road) and the use thereof for the purpose of the Phaltan Sugar Works limited constitutes a public nuisance, because it is an obstruction and an encroachment on the road. It cannot be suggested that the obstruction or encroachment is so inappreciable or so temporary as not to amount to a nuisance. The ~~fact~~ fact that notwithstanding the laying of trolley line it is irrelevant and will not prevent the ~~xxxxx~~encroachment from being a public nuisance. "

It follows therefore that it would not be legally feasible to grant the Premiere Automobile Co. Ltd. permission to lay their tramway lines across the Bombay Agra Road which vests in Government .

Question 2 :- The solution by which the trolley line can be permitted across the road is to pass an Act empowering Government for the purpose. If that is not feasible, the Premiere Automobile Company should be asked to consider whether it is possible to apply under the Tramways Act.

Id/- P.N.M.
dt/- 18-7-46.

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 5115., dated the 19th July 1946.

V.V.K. 5/7/56/

&c.